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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,167	06/26/2003	Casimir R. Kiczek	03-19	8248

7590

12/19/2005

Intellectual Property Department
Dura Automotive Systems, Inc.
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EXAMINER

LOWE, MICHAEL S

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,167

Applicant(s)

KICZEK ET AL.

Examiner

M. Scott Lowe

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Drawings

The drawings were received on 9/28/05. These drawings are accepted but these new drawings are objected to as detailed below.

The drawings are objected to under 37 CFR 1.83(a) because they **fail to show the hook member embodiment used with the rim as described in the specification**. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. **Therefore, the “another end” (add item number 27) and “hook embodiment” (add item number 70) must be shown or the feature(s) canceled** from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application **must be labeled in the top margin as either “Replacement Sheet” or “New Sheet”** pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,5,11,21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 states "the one end" (second occurrence) in line 5, which makes the claim unclear, as there is already "one end" in lines 4 and 5. For sake of examination it is assumed applicant meant "the one end of said second flexible member" (second occurrence).

Claim 1 states "the other end" in line 6, which makes the claim unclear, as there is "another end" in lines 4 and 5. For sake of examination it is assumed applicant meant "the other end of said second flexible member" in line 6.

Claim 5 recites the limitation "...the wing nut and latching plate adapted to engage the rim" in line 5. It is unclear what is "adapted to engage the rim". For sake of examination it is assumed that applicant meant the latch assembly and not just the latching plate is "adapted to engage the rim".

Claim 11 recites the limitation "a tire" in lines 1 and 7. For sake of examination it is assumed the second occurrence was meant to be "the tire".

Claim 11 recites the limitation "the flexible member" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "a spare tire" in lines 1 and 8. For sake of examination it is assumed the second occurrence was meant to be "the spare tire".

Claim 21 recites the limitation "a spare tire" in line 1 and "a tire" in line 4. For sake of examination it is assumed the "a tire" in line 4 was meant to be "the spare tire".

Claim 21 recites the limitation "a vehicle" in lines 1 and 7-8. For sake of examination it is assumed the second occurrence was meant to be "the vehicle".

Claim 21 recites the limitation "a rim" in lines 2 and 5. For sake of examination it is assumed the second occurrence was meant to be "the rim".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3,10-14,16,17,19,21, are rejected under 35 U.S.C. 102(e) as being anticipated by Princell (US 6,505,488).

Re claims 1-3,11,16,21, Princell teaches a latch assembly adapted for use with a vehicle 12,14 including a tire 142 with a rim (not numbered) with at least one aperture (see figures), the latch assembly comprising, in combination:
a tire carrier having a first flexible member 18 having one end attached to a winch 12 and another end detachably attached to the tire 142;

a second flexible member 52A having one end directly connected to the vehicle 12,14 and another end for connecting to the tire 142;

a locking member 52A,54 disposed in the aperture 140 of the tire 142 and attached to the second flexible member 52A, to detachably connect the second flexible member 52A to the rim, the second flexible member preventing the tire from detaching from the vehicle when the winch fails.

Re claim 10, Princell teaches the clamp member (see figures 5-18) including a latch assembly having a rim support plate and a latch member connected to the plate, the rim having a web portion, the clamp member for disposition in the at least one aperture to clamp the web portion between the rim support plate and the latch member.

Re claim 12, Princell teaches the aperture being arcuate and multi-sided.

Re claims 13,17, Princell teaches the clamp member being a latch member.

Re claim 14, Princell teaches the clamp member having a latching member and support plate (see figures 5-18).

Re claim 19, all materials (especially metals) will make an audible signal when struck (clamped) together to some degree, Princell teaches (see figures 5-18) it is known to clamp a tire rim between a support plate and latching member.

Claims 11-14,17,21, are rejected under 35 U.S.C. 102(b) as being anticipated by Sauner (US 5,975,498).

Re claims 11,21, Sauner teaches a latch assembly adapted for use with a vehicle 15 including a tire 32 with a rim 30 with at least one aperture 53, the latch assembly comprising, in combination:

a tire carrier having a first flexible member 18 having one end attached to a winch 10 and another end detachably attached to the tire 32;

a second flexible member 45 having one end connected to the vehicle 15 and another end for connecting to the tire 32;

a locking member 58 disposed in the aperture 53 of the tire 32 and attached to the second flexible member 45, to detachably connect the second flexible member 45 to the rim 30, the second flexible member preventing the tire from detaching from the vehicle when the winch fails.

Re claim 12, Sauner teaches the aperture being arcuate and multi-sided.

Re claims 13,17, Sauner teaches the clamp member being a latch member.

Re claim 14, Sauner teaches the clamp member having a latching member 58,24,22.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Princell (US 6,505,488) in view of Klein (US 4,047,629).

Re claim 5, Princell does not teach the rim (rotably) clamped between a support plate (wing nut) and latching member. However, Klein teaches it is known to clamp a tire rim between a support plate (wing nut) 46,38 and latching member 26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Princell by the general teaching of Klein to (rotably) clamp a tire rim between a support plate (wing nut) and latching member as a known equivalent fastening means and also to more securely grip the rim.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sauner (US 5,975,498) in view of Klein (US 4,047,629).

Re claim 19, while it is inherent, and thus taught by Sauner, that all materials (especially metals) will make an audible signal when struck (clamped) together to some degree, Sauner does not teach the rim (rotably) clamped between a support plate (wing nut) and latching member. However, Klein teaches it is known to clamp a tire rim between a support plate (wing nut) 46,38 and latching member 26. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Sauner by the general teaching of Klein to (rotably) clamp a tire rim between a support plate (wing nut) and latching member as a known equivalent fastening means and also to more securely grip the rim.

Claims 4,6,18,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Princell (US 6,505,488) in view of Hoagland (US 4,492,506).

Re claims 4,6,18 Princell does not teach an eyebolt/hook member. However, Hoagland teaches it is known to use eyebolts/hook members 34,120,122 to clamp spare tire rims and flexible members 88. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Princell by the general teaching of Hoagland to have the second flexible member 45 connected by an eyebolt/hook member assembly as a known equivalent fastening means and also to more securely grip the rim.

Re claim 20, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the locking member go through any available rim aperture desired for convenience.

Claims 18,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauner (US 5,975,498) in view of Hoagland (US 4,492,506).

Re claims 4,6,18 Sauner does not teach an eyebolt/hook member. However, Hoagland teaches it is known to use eyebolts/hook members 34,120,122 to clamp spare tire rims and flexible members 88. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Sauner by the general teaching of Hoagland to have the second flexible member 45 connected by an eyebolt/hook member assembly as a known equivalent fastening means and also to more securely grip the rim.

Re claim 20, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the locking member go through any available rim aperture desired for convenience.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Princell (US 6,505,488) in view of Gasser (US 4,809,477).

Re claim 7, Princell does not teach a toggle member. However, Gasser teaches it is known to use toggle member assemblies to clamp items together. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Princell by the general teaching of Gasser to have a toggle member assembly as a known equivalent fastening means and also to more securely grip the rim.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Princell (US 6,505,488).

Re claim 8, Princell does not state whether the load carrying capability of the second flexible member is greater than that of the first flexible member. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the load carrying capability of the second flexible member is greater than that of the first flexible member since the second flexible member is a safety/theft-deterrent member designed to take over when the first flexible member fails.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sauner (US 5,975,498).

Re claim 16, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the locking member go through any available rim aperture desired for convenience.

Conclusion

Applicant did not respond to the drawing objections in the remarks filed 9/28/05. Many of the previous objections still stand.

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 9/28/05 have been fully considered but they are not persuasive.

Applicant argued that claims 11-14,17,21 are not anticipated by Sauner as amended. However, claims 11-14,17,21 due not have the new "directly connected" limitation of amended claim 1 and thus still read on Sauner since the connection does not need to be a direct one.

Applicant argued that Klein, Hoagland, and Gasser do not teach a second flexible member (etc.). These limitations are taught by the primary reference and thus Klein, Hoagland, and Gasser do not need to teach them.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argued that there is no motivation to make a combination with the primary reference and Klein, Hoagland, and Gasser. First, the motivations are set forth in the above rejections. Second, these secondary references are only being used for a change in simple connections and not for the more complicated structural details argued by applicant. The primary reference teaches the details except where the obvious statements are made in the above rejections.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill would know the value of modifying to use equivalent structures to promote ease of use or make the invention better.


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Scott Lowe whose telephone number is (571) 272-6929. The examiner can normally be reached on 6:30am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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TECHNOLOGY CENTER 3600

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